



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

October 13, 1953

Hon. James A. Bethea, M. D. Opinion No. S-106
Executive Director
Board for Texas State Re: Legality of operating
Hospitals & Special Schools Legion State Sanatorium,
Austin, Texas Kerrville, Texas, as a
 branch of the San Antonio
 State Tuberculosis Hos-
 pital.

Dear Dr. Bethea:

Your request for an opinion reads in part:

"We desire the opinion of your office regarding the legality of operating our Legion State Sanatorium, Kerrville, Texas, as a branch of our San Antonio State Tuberculosis Hospital.

"When the Federal Government indicated its desire to recapture the Weaver H. Baker Sanatorium (Moore Field), the Legislature authorized the Board for Texas State Hospitals and Special Schools in House Bill No. 68, 53rd Legislature, 1953, to transfer patients from the Weaver H. Baker Sanatorium to both the Legion State Sanatorium and the San Antonio State Tuberculosis Hospital.

"In the general appropriation for this biennium, no appropriation was made for a superintendent and business manager for the fiscal year ending on August 31, 1954, at the Legion State Sanatorium.

". . .

"The Board for Texas State Hospitals and Special Schools in its budget request to the last Legislature did not request a Superintendent and a Business Manager at the Legion State Sanatorium because we intended to operate this institution as a branch of the San Antonio State Tuberculosis Hospital.

". . . "

The authority of the Board for Texas State Hospitals and Special Schools to operate Legion State Sanatorium as a branch of the San Antonio State Hospital must, of course, come from the Legislature.

Chapter 30, Acts of the 53rd Legislature, 1953, reads in part as follows:

"Section 1. There shall be added to the Hospitals and Special Schools listed in Article II, H.B.No.426, Acts of the Regular Session of the Fifty-second Legislature, the Legion State Sanatorium and the San Antonio State Tuberculosis Hospital, over which the Board for Texas State Hospitals and Special Schools shall exercise the same functions, control and management as it exercises over the hospitals and special schools listed therein, and shall pay the operating and maintenance expenses, including salaries for personnel, from the Contingency Reserve Fund provided for in said H.B.No.426. The Board for Texas State Hospitals and Special Schools is hereby authorized to transfer tubercular patients from the Weaver H. Baker Tuberculosis Sanatorium, Mission, Texas, to the San Antonio State Tuberculosis Hospital and to the Legion Sanatorium, a part of the Veterans Administration Hospital at Kerrville, Texas. The Board for Texas State Hospitals and Special Schools shall provide for and admit patients to and operate such sanatoria at Kerrville and San Antonio under the same laws, rules and regulations as now provided for admission and treatment of patients at the McKnight State Sanatorium.

". . ."

It will be noted that the Legislature treated the Legion Sanatorium and the San Antonio State Tuberculosis Hospital together throughout this Act and indicated an intent that they be treated as one, although they are located in separate places and have separate names. This, of course, is in no way decisive of the question here involved, but furnishes us with a hint as to the legislative intent.

The General Appropriation Bill, (House Bill No. 111, 53rd Legislature, Regular Session, 1953), reads in part as follows:

"LEGION STATE SANATORIUM (HARLINGEN
STATE TUBERCULOSIS HOSPITAL)

Out of General Revenue Fund

1. Superintendent . . .	\$		\$	6,210
2. Business Manager . . .				4,365
3. Salaries and Wages . . .	465,130		603,866	
4. Travel	500		2,000	
5. Other Operating Expense	269,740		284,208	
6. Capital Outlay	2,000		2,000	

GRAND TOTAL, LEGION STATE SANATORIUM	\$737,370	\$902,649"
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It is seen that no appropriation is made to provide for a Superintendent or Business Manager for the fiscal year ending August 31, 1954, but such appropriation is made for the fiscal year ending August 31, 1955. Clearly the Legislature intended Legion State Sanatorium to operate during the first fiscal year as evidenced by the other appropriations made to that facility. It seems just as clear that the Legislature intended that such hospital operate under the supervision and management of some other institution or as a branch of such institution during the fiscal year ending August 31, 1954, from the fact that it made no appropriation for a Superintendent or Business Manager during that period.

The problem, therefore, resolves itself into a question of who the Legislature intended should assume the management and control of the Legion State Sanatorium during the above mentioned period. The indication given in House Bill No. 68 (supra) is the only indication which we have, and we therefore conclude that the Legislature intended that Legion State Sanatorium be operated as a branch of the San Antonio State Hospital.

This conclusion is bolstered by the fact that this was the intent of the Board for Texas State Hospitals and Special Schools when they made their budget request to the 53rd Legislature.

In reaching this conclusion we are not unmindful of Section 40 of Article 16 of the Texas Constitution which

prohibits one person from holding two offices of profit. The Superintendent and Business Manager of the San Antonio State Tuberculosis Hospital do not fall within its provisions as they are simply taking on additional duties without additional compensation, and they hold no new or additional office.

SUMMARY

The Board for Texas State Hospitals and Special Schools may legally operate Legion State Hospital as a branch of the San Antonio State Tuberculosis Hospital.

APPROVED:

Rudy G. Rice
State Affairs Division

W. V. Geppert
Reviewer

Robert S. Trotti
First Assistant

John Ben Shepperd
Attorney General

DB/rt

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *David Beerbower*
David Beerbower
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